

## Wage and Hour Division, Labor

## § 780.805

amended. This section provides an exemption from the overtime pay provisions of the Act for two industries (a) for employees engaged in ginning of cotton for market in any place of employment located in a county where cotton is grown in commercial quantities and (b) for employees engaged in the processing of sugar beets, sugar-beet molasses, sugarcane or maple sap, into sugar (other than refined sugar) or syrup. The limited overtime exemptions provided for cotton ginning and for sugar processing under sections 7(c) and 7(d) (see part 526 of this chapter) are not discussed in this subpart.

### § 780.801 Statutory provisions.

Section 13(b)(15) of the Fair Labor Standards Act exempts from the overtime requirements of section 7:

Any employee engaged in ginning of cotton for market, in any place of employment located in a county where cotton is grown in commercial quantities, or in the processing of sugar beets, sugar-beet molasses, sugarcane, or maple sap, into sugar (other than refined sugar) or syrup.

Section 13(b)(15) supplants two exemptions that were contained in the Act prior to the Fair Labor Standards Amendments of 1966. The first is former section 13(a)(18), having identical language, which provided a complete exemption for those employed in the ginning of cotton. The second is the former section 7(c) which provided an overtime exemption for the employees of an employer engaged in sugar processing operations resulting in unrefined sugar or syrup.

### § 780.802 What determines application of the exemption.

It is apparent from the language of section 13(b)(15) that the application of this exemption depends upon the nature and purpose of the work performed by the individual employee for whom exemption is sought, and in the case of ginning of cotton on the location of the place of employment where the work is done and other factors as well. It does not depend upon the character of the business of the employer. A determination of whether an employee is exempt therefore requires an examination of that employee's duties. Some employ-

ees of the employer may be exempt while others may not.

### § 780.803 Basic conditions of exemption; first part, ginning of cotton.

Under the first part of section 13(b)(15) of the Act, the ginning of cotton, all the following conditions must be met in order for the exemption to apply to an employee:

(a) He must be "engaged in ginning."

(b) The commodity ginned must be cotton.

(c) The ginning of the cotton must be "for market."

(d) The place of employment in which this work is done must be "located in a county where cotton is grown in commercial quantities." The following sections discuss the meaning and application of these requirements.

#### GINNING OF COTTON FOR MARKET

### § 780.804 "Ginning" of cotton.

The term "ginning" refers to operations performed on "seed cotton" to separate the seeds from the spinnable fibers. (*Moore v. Farmer's Manufacturing and Ginning Co.*, 51 Ariz., 378, 77 F. 2d 209; *Frazier v. Stone*, 171 Miss. 56, 156 So. 596). "Seed cotton" is cotton in its natural state (*Burchfield v. Tanner*, 142 Tex. 404, 178 S.W. 2d 681, 683) and the ginning to which section 13(b)(15) refers is the "first processing" of this agricultural commodity (107 Cong. Rec. (daily ed.) p. 5887), which converts it into the marketable product commonly known as "lint cotton" (*Wirtz v. Southern Pickery Inc.* (W.D. Tenn.) 278 F. Supp. 729; *Mangan v. State*, 76 Ala. 60, 66) by removing the seed from the lint and then pressing and wrapping the lint into bales.

### § 780.805 Ginning of "cotton."

Only the ginning of "cotton" is within the first part of the exemption. An employee engaged in ginning of moss, for example, would not be exempt. The reconditioning of cotton waste resulting from spinning or oil mill operations is not included, since such waste is not the agricultural commodity in its natural state for whose first processing the exemption was provided. (See 107 Cong. Rec. (daily ed.) p. 5887.) The "cotton," "seed cotton," and "lint